

Action  
OCA 86-2205

Log

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	ACTION	INFO
1. D/OCA		X
2. DD/Legislation	X	
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5. DD/House Affairs		X
6. Ch/House Affairs		
7. Admin Officer		
8. Executive Officer		X
9. FOIA Officer		
10. Constituent Inquiries Officer		
11.		
12.		

SUSPENSE 10 July 86  
Date

Action Officer:

Remarks: *Action completed per MFR  
DTD. 8 July 86.*

GJ / 27 June 86

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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

June 25, 1986

86-2205  
**SPECIAL**

LEGISLATIVE REFERRAL MEMORANDUM

TO:

Legislative Liaison Officer-

Department of Justice  
Department of Defense  
Central Intelligence Agency  
National Security Council

OCA FILE Legislation  
RECPT # Ramond

SUBJECT: State's draft report on S. 2335 on U.S. counter-terrorist actions.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than THURSDAY, JULY 10, 1986.

Questions should be referred to AnnetteRooney/SueThau (395-7300), the legislative analyst in this.

*Ronald K. Peterson*

RONALD K. PETERSON FOR  
Assistant Director for  
Legislative Reference

Enclosures

cc: M. Margeson  
B. Howard  
A. Donahue

**SPECIAL**

United States Department of State

*Washington, D.C. 20520*



Dear Mr. Chairman:

I am responding to your request for Executive Branch comments on S. 2335, a bill proposed by Senators Dole and Denton concerning U.S. counter-terrorist actions.

S. 2335 would authorize the President to undertake actions to protect U.S. persons against terrorist activity through any measures consistent with the Constitution that he deems to be necessary, including pursuit with deadly force. The President would be required to report to Congress within 10 days after taking any such action, and the bill is apparently intended by its sponsors to supersede the requirements of the War Powers Resolution with respect to such actions.

In general, this and other Administrations have expressed serious doubts about the wisdom and constitutionality of various parts of the War Powers Resolution. For example, the legislative veto provision in Section 5(c) cannot stand in the face of the Supreme Court's 1983 decision in INS v. Chadha. The Executive Branch has historically differed with the Congress over the wisdom and constitutionality of the 60-day withdrawal provision of Section 5(b), which we consider to be an arbitrary and inflexible deadline that would be an unwise limitation on the President's constitutional authority to deploy U.S. forces in the interests of U.S. national security. Further, serious constitutional problems exist with respect to Section 8(a), which purports to limit the manner in which the Congress may in the future authorize the use of U.S. forces.

With respect to S. 2335, we agree with what we understand to be the main purpose of this proposal, which is to make clear that the President does have authority to use force against terrorists who attack or threaten to attack Americans, and that the President is not required to engage in prior consultation

The Honorable  
Richard G. Lugar, Chairman,  
Senate Foreign Relations Committee,  
United States Senate.

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where it is not possible to do so consistent with the overriding need to protect innocent lives and the safety of our armed forces. However, we believe these propositions are already clear from a proper reading of the Constitution and the War Powers Resolution, and we therefore do not believe that a statutory provision along the lines of S. 2335 is necessary. Nonetheless, we appreciate the intentions of Senators Dole and Denton in making this proposal.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to submission of this report.

Sincerely,

James W. Dyer  
Acting Assistant Secretary  
Legislative and Intergovernmental Affairs